(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 2080 of 2007

PETITIONER : Nandji Lal Nayak.

VERSUS

RESPONDENTS : State of Chhattisgarh & Others.

Post for order on 13th April, 2007

Sd/-
Satish K. Agnihotri
Judge

(S10)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION (C) No. 2080 of 2007

PETITIONER : Nandji Lal Nayak, S/o. Shri Chamru Ram Aged about 28 years, R/o. Village Khapari Tahsil-Pamgarh, Distt.-Janjgir-Champa (C.G.)

VERSUS

RESPONDENTS :
1. State of Chhattisgarh Through: The Secretary, Department of Panchayat, D.K.S. Bhawan, Raipur (C.G.)
2. The Director, Panchayat Chhattisgarh, Raipur (C.G.)
3. The Collector, Janjgir-Champa Distt. – Janjgir-Champa (C.G.)
4. Smt. Anarbai W/O. Shyam Ratan, Aged about 40 years, **(Sarpanch)** Gram Panchayat Khapari, R/O. Village: Khapari, Tahsil : Pamgarh, Distt. Janjgir-Champa (C.G.)

Present: Shri P.K.Patel, Advocate for the petitioner.
Ku. Deepali Pandey, Panel Lawyer for the State / respondents 1 to 3.
Shri Hemant Kesharwani, Advocate for respondent no.4 / caveator.

ORDER

(Passed on 13rd day of April, 2007)

1. By this petition under Article 226 of the Constitution, the petitioner impugnes the order dated 13.03.207 passed by the Director, Panchayat, Chhattisgarh in Appeal Case No. 12/A-89(23)/2006-07 whereunder it was held that the third child of the respondent no. 4

was born on 29.12.2000. Thus, the appeal filed by respondent no. 4 was allowed.

2. The facts in nutshell are that the respondent no. 4, elected Sarpanch of Gram Panchayat Khapri, is having three living children. According to the petitioner, who is an elected panch, the third child was born on 29.11.2001 after 26.01.2001, thus the respondent no. 4 became disqualified under provisions of section 36(1)(m) of The Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993). The Collector, in an application filed by the petitioner, came to the conclusion that the third child of the respondent no. 4 was born on 29.11.2001. Thus, respondent no. 4 was disqualified under the provisions of Sub Section 3 of Section 36 of the Adhiniyam, 1993. In an appeal filed by the respondent no. 4, the Director, Panchayat, after having examined all the facts of the case, came to the conclusion that the third child was born on 29.12.2000.

3. Being aggrieved, the petitioner has filed this petition on the ground that the respondent no. 2 has wrongly believed the birth certificate issued by the Chief Executive Officer, Nagar Panchayat Baloda and the statements made by the other villagers. The Birth Certificate issued by the Police Station, Pamgarh was wrongly disbelieved.

4. On perusal of the pleadings and documents appended thereto, it appears that the Collector has proceeded on the basis of certificate

issued by the Police Station, Pamgarh supported by the report of Kotwar to hold that the third son of the respondent no. 4 was born on 29.11.2000. Under the scheme, Police Station has no jurisdiction to testify the birth of a child. The respondent no. 2, Director, Panchayat, has rightly relied on the certificate issued by the Chief Municipal Officer, Nagar Panchayat, Baloda. The Nagar Panchayat is the competent authority to record the date of birth and death of a person living within the territorial jurisdiction of Nagar Panchayat. It was further found that the report submitted by the Kotwar is not clear as there was over-writing. Thus, no exception could be taken to the findings recorded by the respondent no. 2, Director, Panchayat.

5. It is well settled principle of law that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, has limited jurisdiction to the extent of reviewing the case in the event, there is perversity, irregularity in the process of decision, not in the decision itself.

6. In view of the foregoing, the petition deserves to be and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit